

Possible Changes To:
**Procedural Rules of the
Nevada Commission on Judicial Discipline**

Rule 4. Privileged Communications.

Rule 4 makes essentially everything possible a “privileged” communication and therefore not to be divulged to any person or court.

NRS 1.4695 provides that “The Commission shall adopt rules to establish the status of a particular communication related to a disciplinary proceeding as privileged or nonprivileged.”

This rule should be more narrowly tailored, especially with respect to subsection 4 of Rule 4. “All communications between General Counsel or Executive Director and Commission staff, prosecuting officers, or Commission investigators.”

Essentially, the investigator, prosecutor, and judge/jury can have unlimited communication and it will all be considered privileged??

Rule 6. Formal Charges.

“Upon the filing of the Formal Statement of Charges, said Statement and other documents later formally filed with the Commission shall be made accessible to the public, and hearings shall be open....”

This rule should be amended to require the Commission **to post on their website** the FSOC and any other documents filed subsequently, either with the Commission or with any court. The Commission currently sidesteps this rule by taking the position that anyone can “contact” the Commission and request documents that have been filed and that is how they are made accessible to the public. But the public generally doesn’t know that documents exist aside from the documents that the Commission chooses to post on their website. The mission of the Commission is to protect the public, yet they routinely hide matters from the public that do not reflect the Commission in a favorable light, i.e., a dismissal of a FSOC, an adverse ruling by the Supreme Court, pre-hearing motions, etc. Additionally, the Commission removes documents from their website at their own

discretion. Once documents are posted on the website, they should not be permitted to be removed.

Rule 6 (Continued).

“The Commission’s deliberative sessions and meeting minutes must remain private and shall not be disclosed”

This portion of the rule should be amended to require that **meeting minutes** should be made public and posted on their website. This is a publicly funded body and should not be permitted to operate in total secrecy.

Rule 10. Initiation of Procedure.

4. “A complaint will be reviewed by Commission staff to ensure that it meets the minimum requirements as required by statute.”

Who is the Commission staff that reviews the complaints? What are the objective criteria or checklist for said review?

5. “All complaints shall be reviewed by the Commission to determine whether they state facts, which if true, establish grounds for discipline as set forth in the Nevada Revised Statutes.”

Are these the complaints that have passed the review for minimum requirements?

Rule 12. Determination to Require an Answer.

4. “In preparing to respond to a determination of Reasonable Probability, the Respondent has the right to inspect all records of the Commission relating to the disciplinary action against the Respondent and to be fully advised as to the contents of such records...To the extent practicable, the Respondent shall be supplied with all records of the Commission subject to inspection along with service of the complaint.”

This rule should be amended to **require** the Commission to **provide a copy of the complaint and all corresponding documents** to the respondent **prior to any**

response or interview. The Commission frequently refuses to produce a copy of a complaint prior to an interview of a respondent.

Rule 14. Filing of Formal Statement of Charges.

“...The Formal Statement of Charges is a public document, as are other pleadings, motions, challenges, and supporting affidavits subsequently filed...”

This rule should be amended to **require** the Commission to **post on their website all of the documents listed above.** Currently, the Commission only posts what they want to post despite the fact that their website states in all capital letters **“ALL DOCUMENTS ARE POSTED ON THE COMMISSION WEBSITE”.**

Rule 16. Formal Hearing.

“...The Respondent and all counsel must be notified of the time and place of the hearing and must first be consulted concerning the scheduling thereof to accommodate, where possible, the schedules of the Respondent and counsel and those of their witnesses.”

This rule should be amended to require the Commission to set the hearing at a **time that is mutually agreed upon by the parties and the Commission.**

Historically, there has been no input allowed on the part of Respondent and his/her counsel as to scheduling.

Rule 16 (cont.)

“...The proper venue for judicial hearings and proceedings shall be determined by the Commission at its sole discretion.’

This rule should be amended to state that the **proper venue shall be the jurisdiction where the alleged misconduct occurred.**

NRS 1.462 provides that the Nevada Rules of Civil Procedure apply after a Formal Statement of Charges has been filed.

NRS 13.020 is instructive as to venue. Judicial officers should be treated the same as “public officers”. NRS 13.020 provides in pertinent part as follows: “Actions for the following causes must be tried in the county where the cause, or some part

thereof, arose..., 3. Against a public officer, or person especially appointed to execute the duties of a public officer, for an act done by him or her in virtue of the office, or against a person who, by his or her command, or in his or her aid, does anything touching the duties of the officer.”

Historically, Motions For Change of Venue are routinely denied.

Nor has Electronic Testimony been permitted. The rules should be amended to permit electronic testimony at the discretion of either party.

Rule 24. Rules of Evidence and Due Process.

What is the remedy if the procedural rules of the Commission conflict with the Nevada Rules of Civil Procedure?

Example 1 – Venue? See NRS 13.020.

Example 2 – Interrogatories? See Rules 26 and 33 of the Nevada Rules of Civil Procedure.

The Commission promulgates Interrogatories and compels an Answer **PRIOR** to the filing of Formal Statement of Charges. This is completely contrary to NRCP 26(a) that provides that Interrogatories are due once discovery is opened upon the filing of a complaint. It is also contrary to the holding in Melanie Andress-Tobiasson v. Nevada Commission on Judicial Discipline, No. 77551, wherein the Supreme Court granted a Writ of Prohibition preventing the Nevada Commission on Judicial Discipline from requiring a judge to answer written questions under oath before a formal statement of charges has been filed.

Example 3 – Pre-Hearing Motions? There is currently no time limit for the Commission to rule on pre-hearing motions thereby depriving the Respondent the opportunity to appropriately prepare for hearing.

The current practice is to rule on pre-hearing motions immediately prior to the start of the hearing. The Commission should be required to rule on these Motions at least 14 days prior to the date of the hearing.

Rule 26. Cross-Examination, Evidence, and Time Restrictions. “...The Commission may limit the time each party is allowed to present evidence.”

This rule is applied completely arbitrarily. A Scheduling Order is signed by the Presiding Commissioner that informs the parties of how much time will be allotted to each side to present evidence. There is no input sought from the Respondent as to how much time is needed to present evidence. It is believed that the Prosecuting Officer advises the Commission as to how much time is needed to present evidence. And the Commission automatically provides the same amount of time to the Respondent without consulting the Respondent. A defense frequently requires more time to present.

This rule should be amended to require the Commission to consult with both parties as to how much time each party will require to present their case. Each party should be allowed the amount of time requested to present their case and the Commission can hold them to it.

Rule 27. Order of Dismissal.

An Order of Dismissal should be filed with the Clerk of the Nevada Supreme Court and **posted on the Commission's website.**

TOP RULE CHANGES
For Procedural Rules of the
Nevada Commission on Judicial Discipline

Rule 12 – Amend rule to REQUIRE Commission to provide copy of complaint and all corresponding documents to Respondent prior to scheduling an interview or providing any answer.

Rule 16 – Amend rule to REQUIRE Commission to set the hearing at a time that is **mutually agreed upon by the parties and the Commission.**

Rule 16 (cont.) – Amend rule to state that **proper venue shall be the jurisdiction where the alleged misconduct occurred.**

New Rule – To permit electronic testimony at the discretion of the parties.

New Rule - To establish a time limit for the Commission to rule on pre-hearing motions, at least 14 days prior to the date of hearing. Pre-hearing motions should be afforded oral argument in public unless the parties stipulate otherwise. The rule should also provide that the Commission and parties can appear remotely.

Rule 26 – This rule should be amended to require the Commission to consult with both parties as to how much time each party will require to present their case. Each party should be allowed the amount of time requested to present their case and the Commission can hold them to it.

Rule 4 – This rule should be more narrowly tailored, especially with respect to subsection 4. Essentially the investigator, prosecutor, and judge/jury can have unlimited communication outside the presence of Respondent and Respondent’s counsel and it will all be considered “privileged”???

Rule 6 – There is a lack of transparency on the part of the Commission. This rule should be amended to **require** the Commission **to post on their website** the Formal Statement of Charges and any other documents subsequently filed, as well as any decisions issued by the Supreme Court. The current rule only states that documents “shall be made accessible to the public”. Their website actually states in capital letters that “ALL DOCUMENTS ARE POSTED ON THE COMMISSION WEBSITE”. However, this is completely false.

Rule 27 – This rule should be amended to require the Commission to post an Order of Dismissal **on the Commission’s website** in addition to filing it with the Clerk of the Nevada Supreme Court.

Rule 3.6 – Disqualification of a Commission member or alternate. The Commission currently rules on a motion to disqualify pursuant to a challenge for cause. This motion should be heard by a disinterested third party.

Article 6 issues

Section 21.2 – Will the Supreme Court appoint a limited jurisdiction judge to the Commission?

Section 21.4 – Establish term limits for members of the Commission.

Section 21.5. The Legislature shall establish...© The standards for the investigation of matters relating to the fitness of a justice or judge. (d) The confidentiality or non-confidentiality, as appropriate, of proceedings before the Commission,...

Section 21.7 The Commission shall adopt rules of procedure for the conduct of its hearings and any other procedural rules it deems necessary to carry out its duties.

These rules should be subject to approval by some other body, i.e. Supreme Court or the Legislature??

Nevada Revised Statutes re. Commission on Judicial Discipline

NRS 1.425 – 1.4695

1.440 – Can the Supreme Court appoint a limited jurisdiction judge to the Commission?

1.462 – Nevada Rules of Civil Procedure apply after a Formal Statement of Charges has been filed.

Procedural Rules of the Nevada Commission on Judicial Discipline should be amended to conform to NRS 1.462. See proposed changes.

1.4663.4 – “At the conclusion of the investigation, the investigator shall prepare a written report of the investigation for review by the Commission.”

Language should be added that provides that should a Formal Statement of Charges be filed, this investigative report shall be provided as part of discovery.

1.4687 – Public access to Formal Statement of Charges and certain other records,...

This statute should be amended to require all records, including Formal Statement of Charges and any subsequent documents filed by either party, to be posted on their website. This would also include transcripts of hearings and documents offered as evidence at hearing.

1.4695 – “The Commission shall adopt rules to establish the status of particular communications related to a disciplinary proceeding as privileged or nonprivileged.

This should be amended to require the Commission to conform to existing NRS, i.e. NRS 49.015 and NRS 1.4687.2.